

ORIGINAL

NEW APPLICATION



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AZ CORP COMMISSION
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Attorneys for Northern Sunrise Water Company

BEFORE THE ARIZONA CORPORATION COMMISSION

IN THE MATTER OF THE APPLICATION
OF NORTHERN SUNRISE WATER
COMPANY FOR A CERTIFICATE OF
CONVENIENCE AND NECESSITY TO
PROVIDE WATER UTILITY SERVICE IN
COCHISE COUNTY, ARIZONA.

DOCKET NO. W-20453A-06-0247

**APPLICATION FOR CERTIFICATE OF
CONVENIENCE AND NECESSITY**

Pursuant to A.R.S. § 40-282 and A.A.C. R14-2-402, Northern Sunrise Water Company ("Applicant"), an Arizona corporation, hereby applies to the Arizona Corporation Commission ("Commission") for an Order granting Applicant a new Certificate of Convenience and Necessity ("CC&N") to provide water utility service in certain defined portions of Cochise County, Arizona. The requested CC&N includes the areas previously served by the Mustang Water Company, Crystal Water Company, Sierra Sunset Water Company and Coronado Estates Water Company (collectively "Northern McLain Systems"). The request also encompasses a certain land parcel known as the Babocomari Lands ("Babocomari"), which are immediately adjacent to and south of the Coronado Estates Water Company CC&N area and for which Applicant has received a request from the landowners to potentially provide future water utility services.

INTRODUCTION

I. Background.

Applicant comes before the Commission after an extraordinary process involving the Northern McLain Systems, and the Commission's efforts to help these water utility systems find a new owner/operator with the financial resources, managerial structure and technical experience to provide adequate and reliable water utility service to existing customers in Cochise County. The

1 Northern McLain Systems are part of a larger group of affiliated water utility systems that also
2 includes Cochise Water Company, Miracle Valley Water Company and Horseshoe Ranch Water
3 Company (“Southern McLain Systems”) (collectively referred to as the “McLain Water
4 Systems”). Those water systems not included in this proceeding are being addressed in a separate
5 CC&N application concurrently filed by the Applicant’s affiliate, Southern Sunrise Water
6 Company (“SSWC”).¹ *See In the Matter of the Application of Southern Sunrise Water Company*
7 *for a Certificate of Convenience and Necessity to Provide Water Utility Service in Cochise*
8 *County, Arizona.*

9 The troubled history surrounding the McLain Water Systems is well-chronicled in
10 Commission Decision No. 68412 (January 23, 2006). Previous ownership allowed these systems
11 to fall into a state of serious disrepair, and numerous violations cited by the Arizona Department
12 of Environmental Resources (“ADEQ”) brought into question the potential for risk to the health
13 and safety of customers being served by them. Property and sales taxes associated with these
14 systems were not paid for almost 15 years, and water utility service was being extended to
15 customers outside of the CC&N boundaries of these systems in violation of Arizona law.
16 Ultimately, the previous owners filed for Chapter 13 bankruptcy relief under Title 11 of the
17 United States Bankruptcy Code. *See In re Johnny A. McLain, et al.*, Case No. 4-03-bk-04125
18 TUC-EWH.

19 On October 22, 2004, the Bankruptcy Court for the District of Arizona tentatively
20 approved a Purchase and Sale Agreement (the “Agreement”) executed by Algonquin Water
21 Resources, Inc. (“Algonquin”), which provided for the purchase of the water utility assets
22 included in the McLain Bankruptcy Estate. Cochise County is the creditor-in-interest. On March
23 20, 2006, the Bankruptcy Court for the District issued an Order confirming the sale to Algonquin
24 for an aggregate purchase price of \$696,752.14. This amount was equal to the fair value rate
25

26 ¹ Applicant has concurrently filed a Motion to Consolidate the SSWC CC&N Application with
this and other proceedings.

1 bases of the McLain Water Systems as determined by the Commission. *See* Decision No. 68412.
2 A copy of Bankruptcy Court order is attached hereto as **Exhibit 1**.

3 **II. Issuance of New CC&N to Two Separate Entities.**

4 Before the closing of the transaction already approved by the Bankruptcy Court can take
5 place, certain other matters required to legally facilitate the transfer of assets must be finalized.
6 Algonquin is required, among other things, to obtain Commission approval for: 1) the issuance of
7 all CC&Ns necessary to provide water utility service to customers of the McLain Water Systems;
8 and 2) the sale and transfer of a public service corporation's assets as required by A.R.S. § 40-
9 285. This Application addresses the first issue. Applicant is jointly filing a separate application
10 with NSWC for Commission approval to transfer the McLain Water Systems assets, based on
11 geographic location, into two separate entities with distinct CC&Ns ("Joint Application"). *See In*
12 *the Matter of the Joint Application of Northern Sunrise Water Company and Southern Sunrise*
13 *Water Company for the Approval of Sale and Transfer of Water Utility Assets, and Cancellation*
14 *of Certificates of Convenience and Necessity.*

15 Algonquin chose to consolidate the four water utility systems making up the Northern
16 McLain Systems, and Babocomari, into one CC&N based on their geographical location and
17 system configuration. Applicant must, among other things, construct new water storage facilities,
18 add pressure tanks and booster stations, increase current well capacity, replace existing mains and
19 valves, and map the existing water systems so that the Company can add operational automation
20 to ensure safe and reliable operation. Applicant will need to invest a significant amount of capital
21 in order to bring the McLain Water Systems into compliance with state and federal regulations.
22 *See* Summary record (prepared by the ADEQ) of the compliance history of the McLain Water
23 Companies, attached hereto as **Exhibit 2**; *see also* Decision No. 68412 at ¶ 19. Algonquin has
24 determined that the most efficient and equitable way to begin the monumental task of improving
25 the McLain Water Systems is to consolidate them into two new public service corporations. This
26 issue is addressed in more detail in the Joint Application. *See* Joint Application at p 6.

1 **III. New Water Utility Service Rates and Charges.**

2 Because of the reorganization and subsequent investment in capital improvements, a new
3 rate structure is required and the Commission must make findings as are typical in any application
4 for a new CC&N. In this case, that means new rates have been to take into account the fair value
5 of the Northern McLain Systems assets as established in Decision No. 68412 (\$91,992)², the cost
6 of new infrastructure and other capital improvements that must be added almost immediately
7 (\$480,200), and the pro-rata costs associated with participating in the process that lead to the
8 acquisition of the McLain Water Systems (“Acquisition Costs”) (\$64,619). Applicant’s proposed
9 total fair value rate base is \$636,811 as shown in **Exhibit 8**, attached hereto and further discussed
10 below. Applicant’s proposed rates are shown in **Exhibit 9**, attached hereto and further discussed
11 below. Applicant is a fit and proper entity to provide water service to customers in Cochise
12 County.

13 On January 6, 2006, the Arizona Small Utilities Association of Arizona (“ASUA”) filed
14 an emergency application for interim rates as the interim manager of the McLain Water Systems.³
15 On March 28, 2006, Administrative Law Judge Rodda issued a recommended opinion and order
16 (“ROO”) that, among other things:

17 1) grants interim rate relief subject to the filing of an application for a permanent rate
18 increase no later than March 15, 2007, using a 2006 test year;

19 2) approves a System Improvement Surcharge (SIS) as a means to collect revenue in
20 order to pay debts and make relevant improvements;

21
22

23 ² This is not the exact figure established in Decision No. 68412 due to the allocation of land value
and land rights for each separate water system.

24 ³ *In the Matter of the Application for Emergency Interim Rate Relief for Miracle Valley Water*
25 *Company, Inc., Cochise Water Company, Horseshoe Ranch Water Company, Crystal Water*
26 *Company, Mustang Water Company, Sierra Sunset Water Company and Coronado Estates Water*
Company, Owned by Johnny A. McLain; Docket No. W-01646A-06-0010 et al.

1 3) requires any future owner of the Northern McLain Systems to maintain a separate bank
2 account in which all revenue derived from the SIS must be deposited;

3 4) requires any future owner to apply the SIS funds on a pro-rata basis to each of the
4 systems to correct water outages as they occur, pay debts to local vendors and make system
5 improvements; and

6 5) requires any future owner to work with Commission Staff to devise a priority list of
7 system improvements.

8 These particular recommended conditions raise concerns for the Applicant as each bears
9 upon this request to establish new CC&Ns for the Northern McLain Systems. For one thing,
10 under Section 9.2 of the Agreement, all regulatory approvals and transfers shall be approved
11 without the imposition of any restrictions, conditions, or obligations that are unacceptable to
12 Algonquin in its sole discretion. 2006 also represents too early of a test year upon which to
13 establish permanent rates. Applicant asserts that, under its proposal to immediately upgrade the
14 water systems within the first year of operation, at least twelve months of data is needed to
15 establish proper operating revenues and expenses that are more reflective of normal operating
16 conditions. Therefore, Applicant is willing to stipulate in this proceeding to file a rate application
17 with the Commission by June 30,2008, using a 2007 test year.

18 In addition, several of the proposed conditions related to the SIS appear designed to “run
19 with the plant” and bind future owners irrespective of the basis upon which the transfer of the
20 McLain Water System occurs. Such conditions are impractical given the new CC&N and rate
21 structure proposed herein. Furthermore, the SIS has been proposed because the McLain Water
22 Systems do not have an ability to raise additional capital to make necessary improvements. *See*
23 ROO at ¶ 17. By approving this CC&N application, Southern Sunrise Water Company’s CC&N
24 application and the Joint Application, the Commission will forego the need for the SIS.
25 Therefore, Applicant asserts that in moving forward and approving this Application, the
26

1 Commission specifically exempt Applicant from any condition imposed in the ASUA emergency
2 rate application that run with the plant and bind future owners.

3 Algonquin is a utility holding company that owns and operates several water and
4 wastewater Systems in Arizona.⁴ Applicant maintains that by granting the CC&N and rate
5 structure requested herein, the Commission will: 1) address immediate health and safety concerns
6 by providing some of the approvals and assurances necessary in Applicant's efforts to bring the
7 water utility systems into regulatory compliance; 2) allow for the Applicant to begin the
8 immediate repair and improvement of these systems to ensure reliable operation for present and
9 future customers; and 3) ensure proper regulation of water utility service in the subject portions of
10 Cochise County, in the public interest, through continued Commission oversight.

11 APPLICATION

12 In support of this Application, Applicant states as follows:

13 1. Applicant is a public service corporation formed for the purpose of providing
14 water utility service in Cochise County, Arizona. The proper name, address and corporate
15 structure for Applicant are attached hereto as **Exhibit 3**.

16 2. Applicant's Articles of Incorporation and Bylaws are attached hereto as **Exhibit 4**.

17 3. The area covered by this Application and contains approximately 360 existing
18 residences.

19 4. A copy of the request for water utility service from the owners of the Babocomari
20 Development Association is attached hereto as **Exhibit 5**.

21 5. The list and approximate cost of individual water infrastructure equipment
22 upgrades and new facilities required immediately to bring the water utility operations up to some
23 minimum standard are attached hereto as **Exhibit 6**.

24 6. Applicant's management contact is Greg Sorensen, Algonquin Water Resources of
25

26 ⁴ Bella Vista Water Company, Litchfield Park Service Company; Gold Canyon Sewer Company,
Black Mountain Sewer Corporation and Rio Rico Utilities.

America, Inc., whose business address is 12725 West Indian School Road, Suite D101, Avondale, Arizona 85323. The telephone number is (623) 935-9429.

7. Applicant's operator certified by the ADEQ is Larry Diaz. His business address is 4055 Campus Drive, Sierra Vista, AZ 85635. His telephone number is 520-548-5470.

8. Applicant's attorneys are Fennemore Craig, whose address is 3003 North Central Avenue, Suite 2600, Phoenix, Arizona 85012-2913. The individual attorney responsible for this application is Jay L. Shapiro. Mr. Shapiro's telephone number is (602) 916-5366. **All Data Requests or other Requests for Information should be directed to Greg Sorensen, with a copy to Mr. Shapiro's attention, on behalf of Northern Sunrise Water Company.**

9. A description of existing water infrastructure in the Northern McLain Systems known to Applicant at this time, as documented by the Commission in its Reconstruction Cost New Less Depreciation ("RCND") Study, is attached hereto as **Exhibit 7**.

10. The total estimated cost of: 1) existing Northern McLain Systems assets; 2) immediate capital improvements to repair existing water utility infrastructure; and 3) Acquisition Costs as a regulatory asset, is attached hereto as **Exhibit 8** (Ratebase Schedule).

11. A copy and description of the new tariff rate schedule and statement of charges is attached hereto as **Exhibit 9**.

12. A detailed map indicating the area requested by this Application ("Service Area"), and legal descriptions for all relevant properties, are attached hereto as **Exhibit 10**, however, no legal description is available for the system known as Sierra Sunset because there is no existing CC&N. Applicant will work with Staff as requested to assist Staff in plotting the portion of the CC&N requested herein that corresponds with the Sierra Sunset system. In addition, as stated, the previous owners of the McLain Water Systems have connected new customers without seeking amendment of the CC&Ns. Accordingly, the area covered by this CC&N requests will not likely include every customer served by the existing systems. Applicant will continue to ascertain the location of customers and provide subsequent legal descriptions to Staff so the

1 CC&N maps can be updated.

2 13. The manner of capitalization and methods of financing employed by Applicant
3 will include a combination of paid-in shareholder capital contributions, and advances and/or
4 contributions through line extension agreements, as appropriate. Should the Applicant require
5 debt to finance system improvements, a financing application will be filed with the Commission.

6 14. A general Statement of Financial Condition for Algonquin Power Income Fund,
7 the parent of Algonquin Water Resources of American, Inc., Applicant's parent, is attached
8 hereto as **Exhibit 11**.

9 15. Construction of infrastructure improvements and new facilities is estimated to
10 commence within 90 days of receipt of all necessary government approvals.

11 16. The estimated numbers of customers to be served in each of the first five years of
12 water utility service to the Service Area is as follows:

13 Estimated Number of Residential Customers

14 1 st Year	360
15 2 nd Year	370
16 3 rd Year	380
17 4 th Year	390
18 5 th Year	400

19 The customer growth projections and other financial information provided herein does not
20 include projections for Babocomari. The owner of the development recently obtained a
21 Demonstration of Adequate Water Supply Report, attached hereto as **Exhibit 12**. Preliminary
22 engineering plans are being developed for a water distribution system to serve Babocomari, and
23 Applicant will provide such plans when they are made available. Despite the urgency of this
24 proceeding, Applicant nonetheless asserts that including the new project in the new CC&N
25 application is prudent and will assist in long-range planning to the benefit of the Applicant, its
26 ratepayers and the Commission.

17. Applicant's estimated annual operating revenue and operating expenses for each of

the first five years of operation in the new area covered by this Application, is as follows:

<u>Operating Expenses</u>		<u>Operating Revenue</u>	
1 st Year	\$143,866	1 st Year	\$204,444
2 nd Year	\$154,823	2 nd Year	\$207,534
3 rd Year	\$159,778	3 rd Year	\$213,213
4 th Year	\$164,834	4 th Year	\$218,892
5 th Year	\$170,193	5 th Year	\$224,571

18. The plant cost projections by year for the next five (5) years, as more particularly described in **Exhibit 13**, is as follows:

<u>Plant Cost Projection</u>	
1 st Year	\$480,200
2 nd Year	\$484,300
3 rd Year	\$488,400
4 th Year	\$492,500
5 th Year	\$496,600

19. Applicant shall obtain all appropriate city, county and/or state agency approvals required to provide water utility service in the requested area. Getting these approvals on terms and conditions acceptable to the Applicant is an essential precondition. As an example, given that the systems are currently out of compliance with prevailing ADEQ regulations and are hence liable to enforcement action at any time an understanding respecting a program and a schedule to bring them to compliance concurrent with the transfer of the request permits and authorizations is imperative.

20. ADEQ Approvals to Construct issued for facilities to be constructed in the Service Area will be provided to the Commission as soon as Applicant receives them.

21. Notice of this Application will be given as required by the Commission.

22. For the reasons stated herein, Applicant maintains that this Application is in the public interest and should be granted. There is a present need for regulated water utility service in Cochise County to ensure the public health, and foster orderly growth.

1 WHEREFORE, Applicant respectfully requests the following:

2 A. That the Commission proceeds to consider and act upon this Application as timely
3 as possible and to schedule a hearing, if necessary, on this matter;

4 B. That upon completion of said hearing that the Commission enter an Order
5 approving application for a new Certificate of Convenience and Necessity, which shall include
6 the Service Area requested by this Application as shown in **Exhibit 10**; and further include
7 direction to Commission Staff to accept and include in the CC&N authorized herein, post-
8 decision requests by Applicant to amend the CC&N boundaries to include legal description for
9 any customers currently being served by the McLain Water System who are not specifically
10 included in this CC&N order.

11 C. That the Commission make a fair value finding as shown in **Exhibit 8** and approve
12 the new tariff schedule and rate design as shown in **Exhibit 9**;

13 D. That in approving this Application, the Commission specifically exempt Applicant
14 from any conditions imposed on any future owner of the McLain Water Systems that are
15 established in the emergency rate application filed by ASUA, Docket No. W-01646A-06-0010 *et*
16 *al.*; and

17 E. That the Commission grant such other and further relief as may be appropriate
18 under the circumstances herein.

19 DATED this 13th day of April, 2006.

20 FENNEMORE CRAIG, P.C.

21
22 By: _____

Jay L. Shapiro
Patrick J. Black
Attorneys for Northern Sunrise Water
Company

1 ORIGINAL and 13 copies delivered
2 this 13th day of April, to:

3 Docket Control
4 Arizona Corporation Commission
5 1200 West Washington Street
6 Phoenix, Arizona 85007

7 Copy hand-delivered this 13th day
8 of April, 2006, to:

9 Chairman Jeff Hatch-Miller
10 Arizona Corporation Commission
11 1200 W. Washington St.
12 Phoenix, AZ 85007

13 Commissioner Marc Spitzer
14 Arizona Corporation Commission
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